

## **REMARKS**

These remarks are responsive to the Office Action mailed on October 23, 2007 (“the Office Action”). The Applicant thanks the Examiner for a careful and thorough examination of the above-referenced Application. The Applicant has noticed that there is a discrepancy between the Application as submitted and the Application as published with respect to paragraph numbering. For all purposes of this response, any reference to a paragraph number will correspond to the Application as published.

### **Status of the Claims**

At the time of the Office Action, claims 1-54 were pending, with claims 16-54 having been withdrawn. With this action, claims 1-15 are rejected and claim 1 is objected to. Claim 1 is amended herein. Claims 55-68 are newly added. Support for these amendments may be found throughout the Specification, and specifically in paragraphs [0015], [0020], [0131] and [0132], and in Figures 43-45, 53, 55, and 57-59. No new matter is being submitted.

### **Drawings**

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4), because “reference character 330 has been used to designate both lower caps of the locking assemblies of in the different embodiments.” Office Action, p. 2. The Applicant respectfully notes that the claimed invention presently recites a “lower cap.” Accordingly, that “lower cap” may take the form as a variety of embodiments. Therefore, reference number “330” does not refer to different objects, and the drawings do, in fact, comply with 37 C.F.R. § 1.84(p)(4).

The drawings are objected to as failing to comply with 37 C.F.R. § 1.84(p)(5) because reference numbers 201, 202, and 713 are allegedly not shown in the drawings. Office Action, p. 2. With respect to Figures 201 and 713, Figures 1, 18, 19, 29, 30, 31, 35, 37, 41, 43, and 55 are hereby amended and appropriate replacement sheets are submitted herewith. With respect to reference number 202, paragraph [0103] is amended herein to remove this reference number.

The Applicant respectfully submits that the drawings are now in compliance with 37 C.F.R. §§ 1.84(p)(4) and 1.84(p)(5), and requests these objections be withdrawn.

### **Claim Objections**

Claim 1 was objected to for failing to properly claim “a rod.” Office Action, p. 3. Accordingly, claim 1 has been amended to properly claim “a rod.” The Applicant respectfully requests that this objection be withdrawn.

### **Specification Objections**

Paragraph [0015] (paragraph [0013] are referred to by the Examiner) is objected to for allegedly missing a word at the end of the last sentence. Office Action, p. 3. The Applicant has appropriately amended paragraph [0015] herein. In addition, paragraph [0113] has been amended to correct a typographical error. No new matter is submitted.

### **35 U.S.C. § 102 Rejections**

Claims 1-15 currently stand rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Vienney, (Int. Pub. No. WO 03/024343, translated as U.S. Patent App. Pub. No. 2005/0240180). Office Action, p. 4. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131. The Applicant respectfully submits that the cited reference fails to anticipate “an upper cap and a lower cap joined by a post...said upper cap...comprises an opening to receive said post; and... wherein said post is provided with an outer perimeter with a first profile and said opening is provided with a second profile that is geometrically similar,” as recited by claim 1. The term “geometrically similar” is defined as “having the same shape: differing only in size and position – used of geometrical figures” Webster’s Third New Int’l Dictionary p. 2120 (1981).

In contrast and instead of a post, the cited reference discloses a series of lugs (33). Vienney, ¶¶ 0039-0040; Figures 4 – 7. Vienney’s series of lugs do not anticipate a post, nor do they anticipate a post provided with an outer perimeter with a first profile. Furthermore, whatever profile Vienney’s lugs do provide,

Vienney fails to disclose an opening with a profile that is geometrically similar. Therefore, Vienney fails to anticipate the presently amended claim 1.

For at least the reasons set forth herein, the Applicant respectfully submits that the cited reference fails to anticipate independent claim 1, and any claim depending therefrom. The Applicant respectfully requests that this rejection is withdrawn.

### **35 U.S.C. § 103 Rejections**

Claims 1-4, 6-8, 10 and 11 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yuan, *et al.* (Int. Pub. No. WO 2001/52758) in view of Cotrel (U.S. Patent No. 5,154,719). Office Action, p. 5. Claims 5, 9, and 12-14 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yuan, *et al.* in view of Cotrel, and further in view of Richelsoph, *et al.* (U.S. Patent App. Pub. No. 2003/0187442). Office Action, p. 7. Claim 15 currently stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yuan, *et al.* in view of Cotrel and Richelsoph, *et al.*, and further in view of Bono, *et al.* (U.S. Patent No. 6,755,829) Office Action, p. 7.

In order to render a claim obvious, three basic criteria must be met: (1) there must be some suggestion or motivation to modify the reference's teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference, must teach or suggest all the claim limitations. MPEP § 2143. The Applicant respectfully submits that the cited references, alone or combined, fail to teach or suggest all claim limitations of the rejected claims.

Specifically, the cited references fail to teach or suggest "said at least a portion of female threads extend into said housing to a depth no deeper than the height of said rod, when said rod is fully received within said housing" as recited by claim 1.

Vienney is silent with respect to this feature. Moreover, as discussed above, Vienney fails to teach or suggest the post and opening structure of the amended claims. Cotrel and Richelsoph are also silent as to this feature. Finally,

Bono and Yuan both teach systems that utilize cams, thus they do not teach or suggest threads of any sort.

Further, Richelsoph does not teach a rod system, but instead teaches a plate system providing a screw retaining mechanism to prevent screw back-out. The purpose of the screw back-out feature of Richelsoph and other plate systems is simply to block the screw's exit path. In contrast, a locking assembly for a rod system necessarily provides a different function, namely, forcibly and securely locking a rod into a channel. It would not have been obvious to combine Richelsoph with any of the other references.

For at least the reasons set forth herein, the Applicant respectfully submits that the cited references fail to anticipate independent claim 1, and any claim depending therefrom. Thus, the Applicant respectfully requests that this rejection is withdrawn.

### **Conclusion**

The Applicant respectfully submits that the application is in condition for allowance, and reconsideration and notice of allowance are respectfully requested. If the Examiner believes that prosecution might be advanced by discussing the application with the Applicant's counsel, in person or over the telephone, the Applicant's counsel would welcome the opportunity to do so.

Respectfully submitted,

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